

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

JOSHUA DAVID MARTINEZ

§

§

v.

§

C.A. NO. C-08-197

§

R. MENCHACA, ET AL.

§

**MEMORANDUM AND RECOMMENDATION TO  
DENY PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff is an inmate in the Texas Department of Criminal Justice, Correctional Institutions Division, and is currently incarcerated at the McConnell Unit in Beeville, Texas. Proceeding pro se, he filed a civil rights action pursuant to 42 U.S.C. § 1983. (D.E. 1). Pending is plaintiff's motion for summary judgment. (D.E. 67).

Plaintiff has asserted a claim against defendant Officer Menchaca for violating his due process rights on July 5, 2007, by destroying his property pursuant to TDCJ Administrative Directive 3.72. (D.E. 23, at 6-7). He also has raised claims against defendant Director Nathaniel Quarterman and defendant Deputy Executive Director Ed Owens for implementing unconstitutional policies based on the issuance of TDCJ Administrative Directive 3.72. Id. at 8-10; (D.E. 78, at 3-5).


The pending motion addresses a challenge of a disciplinary proceeding for his possession of a weapon on or about April 28, 2008. (D.E. 61, at 1). He was

found guilty by prison officials at a May 2, 2008 hearing. Id. He subsequently filed Step 1 and Step 2 grievances concerning the disciplinary hearing. Id.

On December 31, 2008, a telephonic hearing was held during which plaintiff's motion for summary judgment was addressed. He acknowledged that it should have been filed in another action in this Court and that he placed the wrong cause number on the motion. The pending motion addresses issues raised in a habeas petition he filed: Martinez v. Quarterman, C-08-166.

Plaintiff's pending motion does not address the issues raised in this civil rights action. Accordingly, it is respectfully recommended that plaintiff's motion for summary judgment, (D.E. 67), be DENIED without prejudice.

Respectfully submitted this 28th day of January 2009.



BRIAN L. OWSLEY  
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within **TEN (10) DAYS** after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to 28 U.S.C. § 636(b)(1)(C); Rule 72(b) of the Federal Rules of Civil Procedure; and Article IV, General Order No. 2002-13, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendations in a magistrate judge's report and recommendation within TEN (10) DAYS after being served with a copy shall bar that party, except upon grounds of *plain error*, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. Douglass v. United Servs. Auto. Ass'n, 79 F.3d 1415 (5th Cir. 1996) (en banc).